From: Doug Mitchell
To: Microsoft ATR
Date: 1/28/02 12:33am
Subject: Microsoft Settlement

In summary, I think this settlement is a bad one.

The longer version is that this settlement has one major loophole that jumps out to anyone who understands the first thing about the current state and near-term future of computing. Given the success that Microsoft has had in the past in twisting consent decrees, there are likely several other that are malleable to Microsoft's long-term plans. The major loophole is the provision which gives Microsoft control over information flow for the purposes of "security" and "authentication/authorization", among others. The next generation of Microsoft technologies (known as .NET) are distributed technologies that are totally reliant upon security and authentication. Any delay on information flow will damage, possibly irreparably, any possible competitive software. Without information from Microsoft, any work to reverse-engineer protocols would be a violation of federal law under the DMCA. Providing the legal cover for Microsoft to justify delays will provide Microsoft a window of opportunity to provide a competitive, bundled solution to undercut third-party software. It is quite frankly astounding that a provision that is this damaging to non-Microsoft software could even be considered minimally effective by someone versed in the software industry.

There are, in fact, several ways to fix this flaw. The simplest way would be to strike Section J in its entirety, but this would merely leave the rest of the hidden flaws. Another option would be for the federal government to simply drop the case, despite its victory in both trial and appelate court. This would go back to the status quo prior to the anti-trust action, but it would have the benefit of not providing legal cover for Microsoft to delay information. A far better solution would be to rewrite the entire solution to incorporate three features. First, reasonable and non-discriminatory licensing of the operating system to any and all vendors at equivalent pricing. Second, all API's for the operating system must be fully and openly documented, with no exceptions. This would protect the underlying source code of Microsoft and would encourage Microsoft to remove bundled features not essential to the core operation and therefore open the door for realistic competition. Third, full and open documentation of all data file formats. With these three components, Microsoft would be able to compete to the best of its ability, and third-party software would be able to do the same.

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